

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN DEBBY BARRETT**, on January 17, 2003 at 8 A.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Debby Barrett, Chairman (R)
Rep. Dee Brown, Vice Chairman (R)
Rep. Larry Jent, Vice Chairman (D)
Rep. Norman Ballantyne (D)
Rep. Arlene Becker (D)
Rep. Sue Dickenson (D)
Rep. Carol Gibson (D)
Rep. Daniel S. Hurwitz (R)
Rep. Hal Jacobson (D)
Rep. Larry Lehman (R)
Rep. Ralph Lenhart (D)
Rep. Alan Olson (R)
Rep. Bernie Olson (R)
Rep. Don Roberts (R)
Rep. Clarice Schrupf (R)
Rep. Frank Smith (D)
Rep. Pat Wagman (R)
Rep. Jonathan Windy Boy (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: Sheri Heffelfinger, Legislative Branch
Joan Reiman, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Tape counters follow the testimony in these minutes.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 109, 12/30/2002;
HB 309, 1/6/2003
Executive Action: HB 44 DO PASS AS AMENDED;
HB 94 DO PASS AS AMENDED;
HB 235 TABLED

HEARING ON HB 309

Sponsor: REP. ROY BROWN, HD 14, Billings

Opening Statement by Sponsor:

REP. BROWN said this bill defines and provides population criteria for redistricting and prohibits the secretary of state from not complying with the criteria. **REP. BROWN** said that the present Districting and Apportionment Commission was too partisan and their votes had been contentious. Their Redistricting Plan 300 allowed more Democratic legislative districts; communities were ignored, he declared. The 'Plan 300' stole votes from rural areas and doughnut areas around cities; but in ten years, rural districts near cities could double in size, he added. He said his goal is to take the politics out of the process by restricting the population deviation limit to plus or minus 1%. He distributed Exhibit 1.

EXHIBIT(sth10a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 11.6}

Proponents' Testimony:

Jack Rehberg, Districting and Apportionment Commissioner and Former Representative, asked the committee to accept the bill and let the courts decide if it is Constitutional. He quoted Susan Fox, Legislative Services Division (LSD), saying "the plan could be put into effect." He said the Attorney General hoped to settle a lawsuit brought by Americans for Civil Liberties Union (ACLU) which is now on appeal.

REP. JOE BALLYEAT, HD 32, Bozeman, provided Exhibit 2 and said the crux of the problem is that courts ruled the Districting & Apportionment Commission can use a 5% population deviation limit to deal with communities of common interest; the intent was to not split up the community. He said he guaranteed this plan would wind up in court anyway, adding that the current plan steals five house districts from the voters. "Our plan is do-able," he said. He noted that the Commission was never intended to be autonomous.

EXHIBIT(sth10a02)

REP. SCOTT MENDENHALL, HD 39, Jefferson County, said the current plan takes 2,500 votes out of southern Jefferson County. He said this bill was an appeal to members' sense of fairness.

{Tape: 1; Side: A; Approx. Time Counter: 12 - 29.5}

SEN. GREG BARKUS, SD 39, Kalispell, Former Districting & Apportionment Commissioner, said all districts should be as equal in population as practicable, and should be compact and contiguous, but that "things change." As an example, he cited the speed limit laws. He said that when Plan 300 was made they did not have good data. A 10% variance amounts to a total of 92,022 people, or 900 people on a district level. "Treasure County does not have 900 people," he pointed out.

{Tape: 1; Side: B; Approx. Time Counter: 14.1 - 19}

Opponents' Testimony:

REP. DAVE GALLIK, HD 52, said he was not a proponent of Plan 300 early on and conveyed that to the Districting & Apportionment Commission. Their plan affected his district adversely, but it was fair, he decided later. The legislature recommends but does not pass on the Commission's decisions, whereas this bill will give the Secretary Of State veto powers, he claimed. He said **REP. ROY BROWN** brought the bill because he lost seven House seats last election, but that he needs a Constitutional amendment to do this.

SEN. MIKE COONEY, SD 26, Former SECRETARY OF STATE, testified that Article 5 Section 14 of the Montana Constitution does not give the Secretary Of State authority to judge the Districting & Apportionment Plan. He urged members to uphold the law and the Constitution.

REP. CHRISTOPHER HARRIS, HD 30, Bozeman, said the 1972 Constitution did not intend for the legislature to make decisions on apportionment. It gave the Secretary Of State a passive role and the legislature's only role is to receive the report.

REP. NORMA BIXBY, HD 5, Big Horn & Rosebud Counties, voiced that the Constitution has given her a place at the table as an American Indian. She claimed the 5% criterion has worked in all previous Commissions, that Jack Rehberg made the original motion for it, and the Districting & Apportionment Commission unanimously adopted it. A 1% criterion is a bad idea and unfair, she expressed. HB 309 would not comply with the American Indian Voting Rights Act, she charged. The 1% rule would hurt and disenfranchise them as they have been for years, she declared.

George Ochenski, representing the Flathead Nation, read written testimony of **D. Fred Matt, Tribal Chairman of the Confederated Salish and Kootenai Tribes**.

EXHIBIT (sth10a03)

Bob Ream, Helena, Montana Democratic Party Chair, said that even if the process were to be put into the Constitution, it would only make this situation more political. He urged them, "Stick to the current process - it works."

REP. VERONICA SMALL-EASTMAN, HD 6, stated the 1% criterion would hurt Native Americans.

Scott Crichton, Director, Montana ACLU, said "if you can create a district of minority people, you must do that."

REP. JOEY JAYNE, HD 73, ARLEE, testified, "This is not a bill of fairness," and she urged do not pass.

{Tape: 1; Side: A; Approx. Time Counter: 29.9 - 60}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 13.6}

Questions from Committee Members and Responses:

REP. DEE BROWN asked **Mr. Ream** if the previous Commission was not dominated by Republicans. **Mr. Ream** answered that it was. **REP. BROWN** asked if their votes in 1990 were not unanimous except for once. **Mr. Ream** agreed they were. **REP. BROWN** asked, "So even though it was a Republican Commission, it took in the questions we're addressing?" **Mr. Ream** said he disagreed. **REP. DEE BROWN** asked the sponsor if HB 309 allowed the Secretary Of State to make decisions. **REP. ROY BROWN** replied that if the criteria are set at 1% and the plan does not reflect it, the Secretary Of State cannot accept that plan. **REP. ALAN OLSON** asked **SEN. BALLYEAT** how Plan 300 would treat Democrats in his district, in reference to the 10% range **SEN. BARKUS** brought up. **SEN. BALLYEAT** replied that it benefitted Democrats overall in the state, but in his district it disenfranchised 10% of the Democratic and Indian votes, and Republicans too.

REP. BERNIE OLSON asked **REP. GALLIK** if he agreed with the One Man-One Vote ruling. **REP. GALLIK** said he believed in the Constitution. **REP. OLSON** asked him if a 10% or 5% deviation was in line with that ruling. **REP. GALLIK** replied that the U.S. Supreme Court has said 5% is Constitutional, and that 41 or 43 other states use this standard, which was set by former **REP. REHBERG** himself. **REP. JACOBSON** asked sponsor if he had contacted the Legal Services counsel regarding this bill. **The sponsor** said he had not. **REP. JENT** asked sponsor if he wanted the Secretary Of State to have the power to reject, because he does not have it now. **REP. BROWN** said, "No." **REP. JENT** said the power explicit

in Article 5, Sec. 4 admits of no exception to what the Secretary Of State can do. **REP. BROWN** replied that the Constitution is not self-enforcing. **REP. JENT** asked if the total power for apportionment is not invested in an independent Commission, not the Secretary Of State or the legislature. **The sponsor** said he does not believe we need an amendment to the Constitution, and that the legislature can do this. **REP. JENT** asked, "You're trying to dictate to an independent commission how they plan?" **REP. BROWN** replied that as a legislative body they raise hands to uphold the Constitution. These districts must be as nearly equal as possible, he asserted. **REP. JENT** asked if he was aware that in the Constitutional Convention, a bill was voted down that gave the legislature absolute right to reject a plan. **REP. BROWN** said the purpose of rejecting that was to remove partisanship. **REP. JENT** asked if the Secretary Of State rejected the Plan, then who would reapportion? **REP. BROWN** said the legislative staff assure him it's technically feasible.

REP. JENT questioned **REP. HARRIS** whether any voter can fill a writ of mandamus to direct the Secretary Of State to file the reapportionment plan. **REP. HARRIS** replied affirmatively. **REP. JENT** asked him to define "mandamus." **REP. HARRIS** said it means an official is to carry out a nonofficial duty. **REP. DON ROBERTS** asked Jack Rehberg if this plan will increase the cost of running for office, since the districts would be more spread out. **Mr. Rehberg** replied he did not know but eastern Montana has lost population. **REP. ROBERTS** asked about unintended consequences. "If they lack money, they can't run, so won't it limit who can run?" **Mr. Rehberg** said he hated to answer that. **REP. SUE DICKENSON** asked the sponsor about Article 14, Sec. 13, if it is a gray area subject to interpretation where it says "within 30 days...it shall become law." **The sponsor** said the Supreme Court needed to decide that.

REP. RALPH LENHART asked **Mr. Ream** what the maximum difference was in terms of people between the 1% and 5% criteria. **Mr. Ream** said it would amount to 451 people, not 900 as was stated previously. **REP. ALAN OLSON** asked **Joe Lamson, Districting & Apportionment Commissioner**, if his Commission intended to use the 5% criterion as broadly as possible. **Mr. Lamson** said they went out to the counties and talked it over with them. "How many communities were split before your plan?" **REP. OLSON** asked. **Mr. Lamson** answered that Havre has always been split but they like it, because they got two representatives. **REP. OLSON** repeated the question. **Mr. Lamson** explained that it split fewer communities than the original plan. **REP. OLSON** asked about the 5% rule, looking at how broadly it is applied across the state, "What is the problem with a one percent standard?" **Mr. Lamson** replied

that one change "can make the whole plan start to ripple. Five percent is how most states proceed."

REP. OLSON then asked **REP. ROY BROWN** to explain Sec. 1, the definition of "compact." **The sponsor** said he had put that question to John MacMasters, LSD attorney, who interpreted it to mean the appearance of a district, the ease of travel within a district or functional compactness with respect to whether a river or other obstacle crossed it. **REP. CINDY YOUNKIN** asked **Mr. Crichton** about the court ruling on the Constitutionality of a "compact and contiguous" district. **Mr. Crichton** said it's complicated but basically "you're being asked to truncate what is working now." He said to ask Susan Fox, LSD, for a pragmatic understanding. **REP. YOUNKIN** asked him for his perspective on whether they should put the Court above the Constitution. **Mr. Crichton** said the Commission is a Constitutional mechanism to defuse partisanship. "[The Commission] can't do a doughnut, but with Montana geography, a district can be spread out; there's no way out of having to travel." **REP. YOUNKIN** asked him if it diluted voting strength to have a plus 5% population in one district across from a minus 5% population in the next. **Mr. Crichton** said the question they ask is whether they can create a majority in the district. He said he is not here to defend the existing Plan, only the process.

REP. DEE BROWN asked **REP. BALLYEAT** about his reaction to the statements made to the press by Democrats. **REP. BALLYEAT** said they used the 10% rule for partisan purpose and had to force lines wherever they could. **REP. DEE BROWN** asked **SEN. COONEY** if it would be unconstitutional for the Secretary Of State to accept a plan which did not comply with the Constitution. **SEN. COONEY** said it is not a decision for the Secretary Of State to make; he acts as a filing agent. She asked him if there were instances where the Secretary of State decided the legality of voting processes. He answered that there were, but in this case the Plan "shall become law." The Secretary has no flexibility; that battle has been fought out in a court of law, he stated. **REP. WINDY BOY** asked **Mr. Lamson** how many hearings he held on his trips around the state. **Mr. Lamson** replied 14-17 hearings. **REP. WINDY BOY** asked how many were done ten years ago [by the previous Commission]. **Mr. Lamson** replied, "about 12 or 13." **REP. WINDY BOY** asked if both parties were allowed to comment. **Mr. Lamson** replied, "Yes, look at the transcripts." **REP. WINDY BOY** asked how the Commission decided on Plan 300. **Mr. Lamson** replied that it was by using balanced criteria. "Compact and contiguous trumps community of interest," he summarized.

REP. BERNIE OLSON asked **SEN. COONEY** if he would say the U.S. Constitution is in play as much as the Montana Constitution here. **SEN. COONEY** said the federal government allows states to design how to run the process; states operate differently. He said his concern is putting the Secretary in an untenable position - that of following the Legislature or the Constitution. "It's a no-win situation," he concluded. **REP. OLSON** asked if One Person-One Vote was the main intent of the 1964 U.S. Supreme Court decision. **SEN. COONEY** said that there are court cases which give latitude on that. **REP. OLSON** asked him if the district were 900 or more people larger, if that would recognize One Person-One Vote. **SEN. COONEY** replied that was not the focus of his testimony. He said, "We're playing by the rules." **REP. LEHMAN** asked when **SEN. COONEY** was Secretary of State, if he recommended two plans. **SEN. COONEY** replied that he had recommended a plan which required no re-apportionment.

REP. CAROL GIBSON asked **Mr. Lamson** what a "muskrat district" is. **Mr. Lamson** replied that it was a "long, thin-shaped district." "The current district which is called that, looks like it did in the past, which is a function of geography: People congregate in the river valleys," he explained. **REP. JENT** asked if it's possible to redistrict with a 1% margin of error. **Mr. Lamson** said it is possible but difficult. **REP. JENT** asked **Mr. Rehberg** if his Districting & Apportionment Commission promulgated the 5% criteria before any hearings had been held. **Mr. Rehberg** admitted that was true. **REP. WAGMAN** asked the sponsor how many incumbent representatives would not be able to run again in their area of residence if this bill passes. **The sponsor** said he did not know, but that the Plan 300 was treacherous because it will pit senators of the same party against each other.

REP. A. OLSON asked **REP. REHBERG** to explain his answer to **REP. JENT**. **REP. REHBERG** said ten years ago the 5% criteria worked well; this time it was subverted. **REP. OLSON** asked if the previous Districting & Apportionment Commission worked well, if they voted together. **REP. REHBERG** said they mostly voted together, and that it was not a Republican Commission as the media portrayed. **REP. DAN HURWITZ** asked what he would have to tell his district about how it got ripped apart. **SEN. COONEY** said to tell them it's based on census, population shifts and growth. "There's no easy answer," he concluded. **REP. RALPH LENHART** asked **Mr. Lamson** what the assurance is, if a 1% criteria comes in, that everyone would be happy. **Mr. Lamson** said that there is no assurance.

{Tape: 1; Side: B; Approx. Time Counter: 19.4 - 60}
{Tape: 2; Side: A; Approx. Time Counter: 0 - 29.9}

Closing by Sponsor: Sponsor closed.

HEARING ON HB 109

Sponsor: REP. CHRISTOPHER HARRIS, HD 30

Opening Statement by Sponsor:

REP. HARRIS gave an example of old laws they would like to delete. A 1953 law says one cannot feed airline food to swine, and more recently, a law says forwarding e-mail without the permission of the sender is a crime. His bill specifies that an interim bi-partisan commission would look through the Montana Codes Annotated (MCA), and the public and lobbyists could also comment. Agencies would identify bad laws, but do not have to recommend with what to replace it.

{Tape: 1; Side: B; Approx. Time Counter: 36.1 - 44.7}

Proponents' Testimony:

Travis Ahner, Montana Trial Lawyers Association, gave an example of bad law: telling carnivals what games they can have, and laws about party phone lines, which no one has any more. It would help avoid litigation, he asserted, if the conflicting laws are removed.

{Tape: 1; Side: B; Approx. Time Counter: 46.2 - 47}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. DEE BROWN asked **REP. HARRIS** why he did not sign the fiscal note. He said that it overestimated the cost; agencies already do this weeding out, and it will not require a full-time attorney. **REP. BROWN** asked if the agencies were attempting to get FTEs (full-time equivalents, i.e., employees). **REP. HARRIS** said he thought so. **REP. ALAN OLSON** asked if he would offer a bill draft to repeal bad laws. **REP. HARRIS** replied that he is working with **REP. CLARK** to remove the law about forwarding e-mails right away. **REP. YOUNKIN** asked if he thought an interim report could be given to the next legislature, and if this would be an ongoing or one-time clean-up. **REP. HARRIS** answered that the legislature could re-authorize the work if it is not done by

2005. He said a large section of codes are in good shape, for example, the eminent domain and criminal law. He said a sunset provision is acceptable to keep the code free of clutter.

REP. JACOBSON asked what the fiscal note should state. **REP. HARRIS** said, less than \$40,000. **REP. LENHART** asked why the LSD's figure is closer to \$80,000. **REP. HARRIS** said that is based on needing a full-time attorney, which he did not think is true. **REP. YOUNKIN** asked him, if agencies are doing this already, why they needed a bill. He said he thought a bill would change the focus. **CHAIRMAN BABBETT** said, "Agencies would look on this as a burden. It costs them \$1,500 - \$2,500 per bill draft. Legislators only have so many bill drafts. Agencies go through interim committees."

Closing by Sponsor:

REP. HARRIS said the fiscal note is "out of whack," that they should clean up the code, and that courts are already overburdened by litigation caused by bad laws.

Discussion:

CHAIRMAN BARRETT said they need an amendment to do Executive Action, and must wait for one. **REP. YOUNKIN** requested an amendment for a sunset date. There was discussion about who must be notified. **REP. JENT** said that "notification" means to put legal notices in the newspapers, and he will work with the sponsor to clean up the language.

EXECUTIVE ACTION ON HB 235

Motion: **REP. WAGMAN** moved to **TABLE HB 235**. Ms. Heffelfinger, Legislative Aide, said first they needed a motion.

Motion: **REP. JENT** moved **HB 235 DO PASS**.

Motion/Vote: **REP. JENT** moved **TO TABLE HB 235**. On a voice vote, motion carried 19-0 with **REP. WINDY BOY**, who had left the room, voting proxy.

EXECUTIVE ACTION ON HB 167

CHAIRMAN BARRETT asked if there were amendments to HB 167. **REP. SCHRUMPF** said some were in the process.

EXECUTIVE ACTION ON HB 94

Motion: REP. DEE BROWN moved HB 94 DO PASS.

Motion: REP. LEHMAN moved the Amendment.

EXHIBIT(sth10a04)

Discussion: Sheri Heffelfinger read the amendment. REP. BROWN asked for further amendments. REP. ALAN OLSON asked REP. YOUNKIN if the bill would require verbatim minutes. She said, "No."

Vote: On a voice vote the amendment carried 19-0, with REP. WINDY BOY voting by proxy.

Motion/Vote: REP. YOUNKIN moved HB 94 DO PASS AS AMENDED. On a voice vote, motion carried 19-0, with REP. WINDY BOY voting by proxy.

EXECUTIVE ACTION ON HB 44

Motion: REP. SMITH moved HB 44 DO PASS.

Motion: REP. SMITH moved DO AMEND HB 44.

EXHIBIT(sth10a05)

Discussion:

Ms. Heffelfinger distributed the amendment. REP. BROWN asked if it would cost the public for members to buy time under this amendment. Ms. Heffelfinger said, "No, this way they pay for their own." REP. HURWITZ asked if it would cost the public \$2,000,000. REP. SMITH replied, "Only without the amendment." CHAIRMAN BARRETT said REP. SMITH did not sign the fiscal note. Ms. Heffelfinger said she could do a revised fiscal note. REP. ALAN OLSON asked if the amendment reduced the unfunded liability of Public Employees Retirement System (PERS). Mike O'Connor, Director, PERS, said that it did. REP. HURWITZ asked Mr. O'Connor if he were in favor of that. Mr. O'Connor said, "Yes," and provided written testimony.

EXHIBIT(sth10a06)

CHAIRMAN BARRETT asked if they needed a new fiscal note. **Ms. Heffelfinger** said the sponsor would need to require a fiscal note if the amendment passes. **CHAIRMAN BARRETT** asked if members wanted to vote now or wait for the fiscal note. Question was called.

Vote: On a voice vote, motion to AMEND HB 44 carried 19-0, REP. WINDY BOY voting by proxy.

Motion/Vote: REP. SMITH moved HB 44 DO PASS AS AMENDED. On a voice vote, motion carried 19-0, with REP. WINDY BOY voting by proxy.

Exhibit 7 on HB 167 was left with the Committee today, but not discussed.

EXHIBIT(sth10a07)

ADJOURNMENT

Adjournment: 11:37 A.M.

REP. DEBBY BARRETT, Chairman

JOAN REIMAN, Secretary

DB/JR

EXHIBIT (sth10aad)